



Department of Community and Human Services  
\_\_\_\_\_  
Division  
Section  
206-xxx-xxxx TTY Relay: 711

## KING COUNTY COMMUNITY AND HUMAN SERVICES CONTRACT – 2014

Contractor \_\_\_\_\_  
Project Title \_\_\_\_\_  
Contract Amount \$ \_\_\_\_\_  
Contract Period From: \_\_\_\_\_ To \_\_\_\_\_  
DUNS No. (if applicable) \_\_\_\_\_ SAM No. (if applicable) \_\_\_\_\_

THIS CONTRACT No. \_\_\_\_\_ is entered into by KING COUNTY (the "County"), and  
(the "Contractor") whose address is \_\_\_\_\_.

NOW THEREFORE, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

### I. EXHIBITS

The Contractor shall provide services and comply with the requirements set forth hereinafter and in the following attached exhibits, which are incorporated herein by reference:

Certificates of Insurance/Endorsements	Attached hereto as Exhibit I
_____	Attached hereto as Exhibit II
_____	Attached hereto as Exhibit III
_____	Attached hereto as Exhibit IV
_____	Attached hereto as Exhibit V

### II. DURATION OF CONTRACT

This Contract shall commence on the \_\_\_\_\_ day of \_\_\_\_\_ 2014, and shall terminate on the \_\_\_\_\_ day of \_\_\_\_\_, unless extended or terminated earlier, pursuant to the terms and conditions of the Contract.

### III. FUTURE SUPPORT

The County makes no commitment to support the services contracted for herein and assumes no obligation for future support of the activity contracted herein except as expressly set forth in this Contract.

### IV. COMPENSATION AND METHOD OF PAYMENT

- A. The Contractor shall apply the funds received from the County under this Contract in accordance with the budget, if included within an Exhibit.

**This form is available in alternate formats upon request for persons with disabilities.**

- B. The County shall reimburse the Contractor for satisfactory completion of the terms and conditions found in this Contract and its attached Exhibits.
- C. The current funding sources, funding levels, and effective dates:

FUNDING SOURCES	FUNDING LEVELS	EFFECTIVE DATES
COUNTY		-
FEDERAL Federal Catalogue No.		-
STATE		-
TOTAL		-

- D. The Contractor shall submit an invoice and all accompanying reports as specified in the attached Exhibit(s), including its final invoice and all outstanding reports. The County shall initiate authorization for payment to the Contractor not more than 30 days after a complete and accurate invoice and all outstanding reports are received and approved.
- E. If the Contractor's final invoice and reports are not submitted by the day specified in the attached Exhibit(s), the County shall be relieved of all liability for payment to the Contractor of the amounts set forth in said invoice or any subsequent invoice.
- F. The Contractor shall not invoice and charge the County for incurred costs which are also specifically paid for by another source of funds.

#### **V. EQUIPMENT PURCHASE, MAINTENANCE, AND OWNERSHIP**

- A. The Contractor agrees that equipment purchased with Contract funds at a cost of \$5,000 per item or more and identified in an Exhibit as reimbursable is, upon its purchase or receipt, the property of the Contractor, County, and/or federal, and/or state government, as specified in the Exhibit.
- B. The Contractor shall be responsible for all such equipment, including the proper care and maintenance.
- C. The Contractor shall ensure that all such equipment shall be returned to the appropriate government agency, whether federal, state or county, upon written request of the County.
- D. The Contractor shall admit County staff to the Contractor's premises for the purpose of marking such property with appropriate government property tags.
- E. The Contractor shall establish and maintain inventory records and transaction documents (purchase requisitions, packing slips, invoices, receipts) of equipment purchased with Contract identified funds.

#### **VI. CONTRACT AMENDMENTS**

Either party may request changes or an extension to this Contract. Proposed amendments which are mutually agreed upon shall be incorporated by written amendments to this Contract. No oral statement or other conduct by the County shall change or modify the Contract.

The Contractor may be requested to provide services as part of King County's Transformation Plan. Should such work entail an increase in the number of people served or a change in service area, the County agrees to negotiate in good-faith an amendment to this Contract.

## **VII. INTERNAL CONTROL, ACCOUNTING AND AUDITS**

### **Internal Control and Accounting**

The Contractor shall establish and maintain a system of accounting and internal controls that comply with applicable, generally accepted accounting principles and financial and governmental reporting standards as prescribed by the appropriate accounting standards board.

### **Audits**

- A. The Contractor shall provide the County with a copy of its applicable IRS Form 990 (Return of Organization Exempt from Tax), IRS Form 1065 (Partnership tax return), or equivalent when requested.
- B. The Contractor shall comply with the specific requirements for independent financial audits or alternatives as follows:
  - 1. A Contractor expending \$500,000 or more in direct or indirect federal funding from all sources during its fiscal year, including other forms of federal financial assistance shall have a single audit or program-specific audit conducted for that year. Such audit shall be done in accordance with the provisions of the Single Audit Act Amendments of 1996 as implemented through the Federal Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations, as revised.
  - 2. A Contractor expending \$300,000 or more from all fund sources during its fiscal year that is not otherwise subject to the requirements of OMB Circular A-133 as outlined above in B.1., shall have a financial statement audit conducted for that year. Such audit shall be performed by an independent certified public accountant and conducted in accordance with the American Institute of Certified Public Accountants' (AICPA) generally accepted auditing standards.
  - 3. A Contractor expending less than \$300,000 from all fund sources during its fiscal year shall be required to complete a limited scope financial statement/internal control review as defined by the AICPA and according to AICPA standards. Any limited scope financial statement/internal control review shall be conducted in accordance with the AICPA's Statements on Standards for Attestation Engagements and shall be performed by an independent certified public accountant.
- C. A Contractor that is not subject to OMB Circular A-133 may, in extraordinary circumstances, request a waiver of audit requirements and, with the review and upon approval of the County, substitute for the above requirements other forms of financial reporting or fiscal representation certified by the Contractor's Board of Directors, provided the Contractor meets the following criteria:
  - 1. That financial statement audit and any associated management letter show no reportable conditions or internal control issues; and

2. There has been no turnover in key staff since the beginning of the period for which the audit was completed.

If the Contractor does not meet the qualifications in Section VII. Audits. C. 1. and 2., then the Contractor shall provide a financial statement audit.

- D. The Contractor shall provide to the County a copy of the audit report, including any management letter or official correspondence submitted by the auditor, its response and corrective action plan for all findings and reportable conditions contained in its previous audit or any alternative documents required under Section VII. Internal Control, Accounting and Audits, Subsection B. 3. of this Contract. These documents shall be submitted no later than nine months subsequent to the end of the Contractor's fiscal year. The documents may be submitted electronically, in a portable document format (PDF) or in hard copy.
- E. If additional federal and/or state audit or review requirements are imposed on the County during the term of this Contract, the Contractor agrees this Contract may be amended to require that the Contractor comply with any such additional audit requirements. Even if this Contract is not amended, the Contractor agrees to comply with any such additional audit requirements.
- F. If the Contractor receives a financial audit, including an A-133 audit, due to requirements other than stated herein, such audit shall be provided to the County within the time period identified in Section VII. Internal Control, Accounting and Audits Subsection D., even if not otherwise required under this section.
- G. The Contractor agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception that occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay shall survive the expiration or termination of the Contract.

## **VIII. RECORDS, INSPECTIONS AND EVALUATIONS**

- A. Retention of Records
  1. The Contractor and its Subcontractors shall maintain books, records, and documents of its performance under this contract in accordance with generally accepted accounting principles. The Contractor shall retain for six years after the date of final payment under the Contract all financial information, data and records for all work.
  2. The Contractor shall inform the County in writing of the location, if different from the Contractor address listed on page one of this Contract, of the aforesaid books, records, documents and other evidence within ten working days of any such relocation.
- B. Evaluations and Inspections
  1. The Contractor shall provide right of access to its facilities, including those of any Subcontractor, to the County, the state, and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the services provided under this

Contract. The County shall give advance notice to the Contractor in the case of fiscal audits to be conducted by the County.

2. The records and documents with respect to all matters covered by this Contract shall be subject at all times to inspection, review, or audit by the County and/or federal/state officials so authorized by law during the performance of this Contract and six years after termination hereof, unless a longer retention period is required by law.
3. The Contractor agrees to cooperate with the County or its agent in the evaluation of the Contractor's performance under this Contract and to make available all information reasonably required by any such evaluation process. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW Chapter 42.56.

C. **Public Records Requests**

1. This Contract shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, chapter 42.56 RCW (the "Act").
2. If the Contractor considers any portion of any record provided to the County under this Contract, whether in electronic or hard copy form, to be protected under law, the Contractor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the Act. If the County determines that the material is subject to disclosure, the County will notify the Contractor of the request and allow the Contractor ten business days to take whatever action it deems necessary to protect its interests. If the Contractor fails or neglects to take such action within said period, the County will release the portions of record(s) deemed by the County to be subject to disclosure. The County shall not be liable to the Contractor for inadvertently releasing records pursuant to a disclosure request not clearly identified by the Contractor as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET."

**IX. PROPRIETARY RIGHTS**

- A. The parties to this Contract hereby mutually agree that if any patentable or copyrightable material or article should result from the work described herein, all rights accruing from such material or article shall be the sole property of the County. The County agrees to and does hereby grant to the Contractor, irrevocable, nonexclusive, and royalty-free license to use, according to law, any material or article and use any method that may be developed as part of the work under this Contract.
- B. The foregoing products license shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Contractor which are modified for use in the performance of this Contract.
- C. The foregoing provisions of this section shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Contractor that are not modified for use in the performance of this Contract.

## **X. CORRECTIVE ACTION**

If the County determines that a breach of contract has occurred, that is, the Contractor has failed to comply with any terms or conditions of this Contract or the Contractor has failed to provide in any manner the work or services agreed to herein, and if the County deems said breach to warrant corrective action, the following sequential procedure shall apply:

- A. The County shall notify the Contractor in writing of the nature of the breach;
- B. The Contractor shall respond in writing no later than ten working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies. The corrective action plan shall specify the proposed completion date for bringing the Contract into compliance, which date shall not be more than 30 days from the date of the Contractor's response, unless the County, at its sole discretion, specifies in writing an extension in the number of days to complete the corrective actions;
- C. The County shall notify the Contractor in writing of the County's determination as to the sufficiency of the Contractor's corrective action plan. The County shall have sole discretion in determining the sufficiency of the Contractor's corrective action plan;
- D. In the event that the Contractor does not respond within the appropriate time with a corrective action plan, or the Contractor's corrective action plan is determined by the County to be insufficient, the County may commence termination of this Contract in whole or in part pursuant to Section XI. Termination Subsection A.;
- E. In addition, the County may withhold any payment owed the Contractor or prohibit the Contractor from incurring additional obligations of funds until the County is satisfied that corrective action has been taken or completed; and
- F. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section XI. Termination Subsections A, B, C, and D.

## **XI. TERMINATION**

- A. This Contract may be terminated by the County without cause, in whole or in part, prior to the termination date specified in Section II. Duration of Contract, by providing the Contractor 30 days advance written notice of the termination.

The County may terminate this Contract, in whole or in part, upon seven days advance written notice in the event that:

- 1. The Contractor materially breaches any duty, obligation, or service required pursuant to this Contract; or
- 2. The duties, obligations or services required herein become impossible, illegal, or not feasible.

If the Contract is terminated by the County, pursuant to this Section XI. Termination Subsection A.1, the Contractor shall be liable for damages, including any additional costs of procurement of similar services from another source.

If the termination results from acts or omissions of the Contractor, including but not limited to misappropriation, nonperformance of required services, or fiscal mismanagement, the Contractor shall immediately return to the County any funds, misappropriated or unexpended, which have been paid to the Contractor by the County.

- B. If County or other expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth in this Contract and its attached Exhibits, the County may, upon written notification to the Contractor, terminate this Contract in whole or in part.

If the Contract is terminated as provided in this Subsection:

1. The County shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and
2. The Contractor shall be released from any obligation to provide such further services pursuant to the Contract as are affected by the termination.

Funding or obligation under this Contract is conditional upon appropriation by the County Council of sufficient funds to support the activities described in the Contract. Should such appropriation not be approved, this Contract shall terminate at the close of the current appropriation.

- C. This Contract may be terminated by the Contractor without cause, prior to the date specified by providing the County 90 days advance written notice of the termination. The Contractor shall provide the County 90 days advance written notice of its intent not to renew this Contract, in whole or in part.
- D. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Contract or law that either party may have in the event that the obligations, terms, and conditions set forth in this Contract are breached by the other party.

## **XII. ENTIRE CONTRACT/WAIVER OF DEFAULT**

The parties agree that this Contract is the complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such through written approval by the County, which shall be attached to the original Contract.

## **XIII. HOLD HARMLESS AND INDEMNIFICATION**

- A. In providing services under this Contract, the Contractor is an independent contractor, and neither it nor its officers, agents, or employees are employees of the County for any purpose. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

- B. The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes, by, or on behalf of the Contractor, its employees, and/or others by reason of this Contract. The Contractor shall protect, indemnify, and hold harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from: (1) the Contractor's failure to pay any such compensation, wages, benefits, or taxes; and/or (2) the supplying to the Contractor of work, services, materials, or supplies by Contractor employees or other suppliers in connection with or support of the performance of this Contract.
- C. The Contractor further agrees that it is financially responsible for and shall repay the County all indicated amounts following an audit exception that occurs due to the negligence, intentional act, and/or failure, for any reason, to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay the County shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Duration of Contract or the Termination sections.
- D. The Contractor shall protect, defend, indemnify, and hold harmless the County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the Contractor, its officers, employees, and/or agents, in its performance and/or non-performance of its obligations under this Contract. The Contractor agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Contractor, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the County incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Contractor.
- E. The County shall protect, defend, indemnify, and hold harmless the Contractor, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the County, its officers, employees, or agents. The County agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the County, by mutual negotiation, hereby waives, as respects the Contractor only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the Contractor incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the County.
- F. Claims shall include, but not be limited to, assertions that use or transfer of software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.
- G. To the extent that a Contractor subcontractor fails to satisfy its obligation to defend and indemnify the County as detailed in Section XVII. Conflict of Interest Subsection B. of this Contract, the Contractor shall protect, defend, indemnify, and hold harmless the County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards or damages arising out of, or in any way resulting from, the negligent act



or omissions of the Contractor's subcontractor, its officers, employees, and/or agents in connection with or in support of this Contract.

- H. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.
- I. The indemnification, protection, defense and hold harmless obligations contained herein shall survive the expiration, abandonment or termination of this Contract.

#### **XIV. INSURANCE REQUIREMENTS**

Upon execution of this Contract, the Contractor, at its own cost, shall have procured and will maintain for the duration of this Contract, insurance as specified in the Minimum Scope and Limits of Insurance. Failure by the Contractor, its agents, employees, officers, and or subcontractors, to comply with the insurance requirements stated herein shall constitute a material breach of this Contract.

Each insurance policy shall be written on an "occurrence" form; except that professional liability, errors and omissions, will be acceptable on a "claims made" form.

If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the work which is the subject of this Contract.

By requiring such minimum insurance coverage, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

- A. Minimum Scope and Limits of Insurance;  
The Contractor shall maintain limits no less than,
  - 1. General Liability: \$\_\_\_\_\_ combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$\_\_\_\_\_ aggregate limit. CG 00 01 current edition, including Products and Completed Operations covering COMMERCIAL GENERAL LIABILITY.
  - 2. Professional Liability, Errors and Omissions: \$\_\_\_\_\_ Per Claim and in the Aggregate. In the event that services delivered pursuant to this Contract either directly or indirectly involve or require professional services, Professional Liability, Errors, and Omissions coverage shall be provided. "Professional Services," for the purpose of this Contract section, shall mean any services provided by a licensed professional or those services that require professional standards of care.
  - 3. Automobile Liability: \$\_\_\_\_\_ combined single limit per accident for bodily injury and property damage. In the event that services delivered pursuant to this Contract

involve the transportation of clients by Contractor personnel in Contractor-owned vehicles or non-owned vehicles Risk Management will review and set the appropriate limits of coverage.

Insurance Services Office form number (CA 00 01) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the appropriate coverage provided by symbols 2, 7, 8, or 9.

4. Workers' Compensation: Statutory requirements of the State of residency, and Employers' Liability or "Stop Gap" coverage: \$\_\_\_\_\_.

B. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor.

C. Other Insurance Provisions and Requirements

The insurance coverage(s) required in this Contract are to contain, or be endorsed to contain the following provisions:

1. All Liability Policies except Workers' Compensation and Professional Liability:

- a. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2010 11/85" or its equivalent is required. The County requires this Endorsement to complete the Contract.
- b. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents.
- c. The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2. All Policies

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after 45 calendar days prior written notice, has been given to the County.

D. Acceptability of Insurers

Insurance coverage is to be placed with insurers with an AM Best's rating of no less than A: VIII, or, if not rated with an AM Best's, with minimum surpluses the equivalent of an AM Best's surplus size VIII.

Professional Liability, Errors and Omissions insurance coverage may be placed with insurers with an AM Best's rating of B+:VII. Any exception must be approved by the County.

If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

E. Verification of Coverage

The Contractor shall furnish the County certificates of insurance and endorsements required by this Contract. Such certificates and endorsements, and renewals thereof, shall be attached as exhibits to the Contract. The certificates and endorsements for each insurance policy are to be on forms approved by the County prior to the commencement of activities associated with the Contract. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

If the Agency/Contracting Party is a Municipal Corporation or an agency of the State of Washington and is a member of the Washington Cities Insurance Authority (WCIA) or any other self-insurance risk pool, a written acknowledgement/certification of current membership will be attached to the Agreement as Exhibit I and satisfies the insurance requirements specified above.

F. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract not provided by the Contractor, shall be subject to all of the requirements stated herein.

**XV. NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY**

A. Nondiscrimination in Employment

During performance of this Contract, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

B. Equal Employment Opportunity Efforts

The Contractor will undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. The Contractor's equal employment opportunity efforts shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices setting forth this nondiscrimination clause. In accordance with

KCC 12.16.010.J, "equal employment opportunity efforts" shall mean active efforts to ensure equal opportunity in employment that is free from all forms of discrimination.

Ref: KCC 12.16.020.

C. Equal Benefits to Employees with Domestic Partners

Pursuant to Ordinance 14823, King County's "Equal Benefits" (EB) ordinance, and related administrative rules adopted by the County Executive, as a condition of a competitive award of a contract valued at \$25,000 or more, the non-public Contractor agrees that it shall not discriminate in the provision of employee benefits between employees with spouses, and employees with domestic partners during the performance of this Contract. Failure to comply with this provision shall be considered a material breach of this Contract, and may subject the Contractor to administrative sanctions and remedies for breach.

When a competitively awarded contract is valued at \$25,000 or more, the Contractor shall complete a Worksheet and Declaration form for County review and acceptance prior to Contract execution. The EB Compliance forms, Ordinance 14823 (which is codified at KCC Chapter 12.19), and related administrative rules are incorporated herein by reference. They are also available online at:

[http://www.kingcounty.gov/operations/procurement/Services/Equal\\_Benefits.aspx](http://www.kingcounty.gov/operations/procurement/Services/Equal_Benefits.aspx)

D. Nondiscrimination in Subcontracting Practices.

During the term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person because of their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

E. Compliance with Laws and Regulations.

The Contractor shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, Chapter 49.60 RCW, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987. KCC chapters 12.16, 12.17 and 12.18 are incorporated herein by reference and the requirements in these code sections shall specifically apply to this Contract. The Contractor shall further comply fully with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.

F. Small Contractors and Suppliers and Minority and Women Business Enterprises Opportunities.

King County encourages the Contractor to utilize small businesses, including Small Contractors and Suppliers (SCS), as defined below, and minority-owned and women-owned business enterprises certified by the Washington state Office of Minority and Women's Business Enterprises (OMWBE) in County contracts. The County

encourages the Contractor to use the following voluntary practices to promote open competitive opportunities for small businesses, including SCS firms and minority-owned and women-owned business enterprises:

1. Inquire about King County's Contracting Opportunities Program. King County has established a Contracting Opportunities Program to maximize the participation of SCS in the award of King County contracts. The Program is open to all SCS firms certified by King County Business Development and Contract Compliance (BDCC). As determined by BDCC and identified in the solicitation documents issued by the County, the Program will apply to specific contracts. However, for those contracts not subject to the Program or for which the Contractor elected not to participate in the Program during the solicitation stage, the Contractor is still encouraged to inquire voluntarily about available firms. Program materials, including application forms and a directory of certified SCS firms, are available at the following Web-site address: <http://www.kingcounty.gov/bdcc>

The term "Small Contractors and Suppliers" means that a business and the person or persons who own and control it are in a financial condition which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Program is set at 50 percent of the Federal Small Business Administration (SBA) small business size standards using the North American Industry Classification System and Owners' Personal Net Worth less than \$750,000.

2. Contact the OMWBE to obtain a list of certified minority-owned and women-owned business enterprises by visiting their website at <http://www.omwbe.wa.gov/> or by Toll Free telephone (866) 208-1064.
  3. Use the services of available community organizations, consultant groups, local assistance offices, the County, and other organizations that provide assistance in the recruitment and placement of small businesses, including SCS firms and minority-owned and women-owned business enterprises.
- G. Sanctions for Violations - Any violation of the mandatory requirements of the provisions of this section shall be a material breach of Contract, for which the Contractor may be subject to damages, withholding payment and any other sanctions provided for by Contract and by applicable law.
- H. Compliance with Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and the Americans with Disabilities Act of 1990 as amended (ADA).

Pursuant to Title II of the ADA, and Section 504, King County must not discriminate against people with disabilities in providing services, programs or activities even if those services, programs or activities are carried out by contractors. The Contractor agrees that it shall provide all programs, services, and activities to County employees or members of the public under this Contract in the same manner as King county is obligated to under Title II of the ADA, and Section 504 and shall not deny participation of the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with this section shall be a material breach of, and grounds for the immediate termination of, this Contract.

The Contractor agrees to provide to persons with disabilities access to programs, activities and services provided under the Contract or agreement, as required by the disability access laws as defined by KCC 12.16; and

The Contractor shall not discriminate against persons with disabilities in providing the work under the Contract. In any subcontracts for the programs, activities and services under their Contract or agreement with the County, the Contractor shall include the requirement that the Subcontractor provide to persons with disabilities access to programs, activities and services provided under the Contract or agreement, as required by the disability access laws as defined by KCC 12.16, that the Subcontractor shall not discriminate against persons with disabilities in providing the work under the Contract and that the Subcontractor shall provide that the County is a third party beneficiary to that required provision.

## **XVI. SUBCONTRACTS AND ASSIGNMENT/SUBCONTRACTING**

- A. The Contractor shall include Sections III. Future Support, IV. Compensation and Method of Payment, V. Equipment Purchase, Maintenance and Ownership, VII. Internal Control, Accounting and Audits, VIII. Records, Inspections and Evaluations, XIII. Hold Harmless and Indemnification, XIV. Insurance Requirements, XVI. Subcontracts and Assignment/Subcontracting, paragraph B., XXV. Service Provided in Accordance with Law and Rule and Regulation, and XXVII. Political Activity Prohibited in every subcontract or purchase agreement for services which relate to the subject matter of this Contract.
- B. The Contractor agrees to include the following language verbatim in every subcontract, provider agreement or purchase agreement for services which relate to the subject matter of this Contract:

“Subcontractor shall protect, defend, indemnify, and hold harmless King County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the negligent act or omissions of subcontractor, its officers, employees, and/or agents in connection with or in support of this Contract. Subcontractor expressly agrees and understands that King County is a third party beneficiary to this Contract and shall have the right to bring an action against subcontractor to enforce the provisions of this paragraph.”
- C. The Contractor shall ensure that all subcontractors receiving any federal funds pursuant to this agreement have not been disbarred or suspended from federal contract participation. This may be done by checking the Excluded Parties List System <https://www.sam.gov>, which lists all suspended and debarred entities.
- D. The Contractor shall not assign or subcontract any portion of this Contract or transfer or assign any claim arising pursuant to this Contract without the written consent of the County. Said consent shall be sought in writing by the Contractor not less than 15 days prior to the date of any proposed assignment or subcontract.
- E. “Subcontract” shall mean any agreement between the Contractor and a subcontractor or between subcontractors that is based on this Contract, provided that the term “subcontract” does not include the purchase of (1) support services not related to the subject matter of this Contract, or (2) supplies.

## **XVII. CONFLICT OF INTEREST**

- A. The Contractor agrees to comply with applicable provisions of KCC Chapter 3.04. Failure to comply with such provisions shall be a material breach of this Contract, and may result in termination of this Contract pursuant to Section XI. Termination and subject the Contractor to the remedies stated therein, or otherwise available to the County at law or in equity.
- B. Disclosure of Current and Former County Employees - To avoid any actual or potential conflict of interest or unethical conduct:
  - 1. County employees or former County employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the County or within one year after leaving County employment if he/she participated in determining the services contracted for herein or processes to be followed while a County employee.
  - 2. Contractor shall identify at the time of offer current or former County employees involved in the preparation of proposals or the anticipated performance of work if awarded the Contract. Failure to identify current or former County employees involved in this Contract may result in termination of this Contract.
  - 3. After Contract award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

## **XVIII. BOARD OF DIRECTORS**

- A. If the Contractor is incorporated, it shall have an active, legally constituted board of directors in accordance with RCW Chapters 23B or 24, as applicable.
- B. The following additional requirements shall apply to the contractors that qualify as non-profit organizations under USC, Title 26, Subtitle A, Chapter 1, Subchapter F, Part 1, Section 501(C)(3):
  - 1. The Contractor shall have a Board of Directors that shall be comprised of neither employees nor relatives of employees, officers, or directors of the Contractor. For the purposes of this section, a relative is defined as husband, wife, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, grandparent, grandchild, uncle, aunt, domestic partner and child of domestic partner. In addition, the relatives of a domestic partner shall be considered relatives to the same extent such relatives would be included in this section, as if the employee and domestic partner were married;
  - 2. The Board of Directors shall meet regularly; and
  - 3. The Board of Directors shall cause to be adopted a formal conflict of interest policy for Board members that complies with the applicable provisions of the Internal Revenue Code and its 501(C)(3) status, and addresses issues regarding gifts, financial gain, and improper use of position.

## **XIX. CONFIDENTIALITY**

The Contractor agrees that all information, records, and data collected in connection with this Contract shall be protected from unauthorized disclosure in accordance with applicable state and federal law.

**XX. PERSONAL INFORMATION – NOTICE OF SECURITY BREACH**

- A. If the Contractor maintains computerized or other forms of data that includes personal information owned by the County, the Contractor shall notify the County of any breach of the security of the data immediately following discovery if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person in accordance with RCW 42.56.590(2).
- B. The Contractor shall provide all information requested by the County including the following in accordance with RCW 42.56.590, KCC 2.14.030, the King County Information Privacy Policy and any other applicable federal, state and local statute:
  - 1. Circumstances associated with the breach;
  - 2. Actions taken by the Contractor to respond to the breach; and
  - 3. Steps the Contractor shall take to prevent a similar occurrence.

This information shall be provided in a format requested by the County.

- C. The County may, at its sole discretion, require the Contractor to contact the appropriate law enforcement agency and to provide the County a copy of the report of the investigation conducted by the law enforcement agency. The Contractor shall also provide the County with any information it has regarding the security breach.
- D. The Contractor shall conspicuously display King County's Privacy Notice and provide a printed copy upon request.
- E. The Contractor shall be responsible for notifying individuals whose personal information may have become available to unauthorized users through a security breach. The Contractor shall also be responsible for any cost associated with notifying the affected individuals. This notification must be in accordance with RCW 42.56.590 (7).
- F. If the Contractor demonstrates that the cost of providing notice would exceed \$250,000, or that the potentially affected persons exceeds \$500,000, or the Contractor does not have sufficient contact information, substitute notice shall consist of the following in accordance with RCW 42.56.590 (7), (c).:
  - 1. E-mail notice when the Contractor has an e-mail address for the subject persons;
  - 2. Conspicuous posting of the notice on the Contractor's web site page, if the Contractor maintains one; and
  - 3. Notification to major County-wide media.
- G. For purpose of this section, "personal information" means the same as defined in RCW 42.56.590:



1. An individual's first name or first initial and last name in combination with any one of the following data elements, when either the name or the data elements are not encrypted: social security number, driver's license number or Washington identification card number; or
2. Account number or credit or debit card number, in combination with any required security code; access code, or password that would permit access to an individual's financial account.

**XXI. COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)**

**A. Obligations and Activities of the Contractor**

1. The Contractor agrees not to use or disclose protected health information other than as permitted or required by this Contract, HIPAA and the Health Information Technology for Economic and Clinical Health Act (HITECH). The Contractor shall use and disclose protected health information only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR § 164.504(e). The Contractor is directly responsible for full compliance with the privacy provisions of HIPAA and HITECH that apply to business associates.
2. The Contractor agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information that it creates, receives, maintains, or transmits on behalf of the County as required by 45 CFR, Part 164, Subpart C. The Contractor is directly responsible for compliance with the security provisions of HIPAA and HITECH to the same extent as the County.
3. Within two business days of the discovery of a breach as defined at 45 CFR § 164.402 the Contractor shall notify the County of any breach of unsecured protected health information. The notification shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the Contractor to have been, accessed, acquired, or disclosed during such breach; a brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known; a description of the types of unsecured protected health information that were involved in the breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved); any steps individuals should take to protect themselves from potential harm resulting from the breach; a brief description of what the Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; the contact procedures of the Contractor for individuals to ask questions or learn additional information, which shall include a toll free number, an e-mail address, Web site, or postal address; and any other information required to be provided to the individual by the County pursuant to 45 CFR § 164.404, as amended. A breach shall be treated as discovered in accordance with the terms of 45 CFR § 164.410. The information shall be updated promptly and provided to the County as requested by the County.

4. The Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to the Contractor of a use or disclosure of protected health information by the Contractor in violation of the requirements of this Contract or the law.
5. The Contractor agrees to report in writing all unauthorized or otherwise improper disclosures of protected health information or security incident to the County within two days of the Contractor knowledge of such event.
6. The Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply through this Contract to the Contractor with respect to such information.
7. The Contractor agrees to make available protected health information in accordance with 45 CFR § 164.524.
8. The Contractor agrees to make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR § 164.526.
9. The Contractor agrees to make internal practices, books, and records, including policies and procedures and protected health information, relating to the use and disclosure of protected health information received from, or created or received by the Contractor on behalf of King County, available to the Secretary of the U.S. Department of Health and Human Services, in a reasonable time and manner for purposes of the Secretary determining King County's compliance with HIPAA, HITECH or this Contract.
10. The Contractor agrees to make available the information required to provide an accounting of disclosures in accordance with 45 CFR §164.528. Should an individual make a request to the County for an accounting of disclosures of his or her protected health information pursuant to 45 CFR § 164.528, Contractor agrees to promptly provide an accounting, as specified under 42 U.S.C. § 17935(c) (1) and 45 CFR §164.528, of disclosures of protected health information that have been made by the Contractor acting on behalf of the County. The accounting shall be provided by the Contractor to the County or to the individual, as directed by the County.
11. To the extent the Contractor is to carry out one or more of the covered entity's obligations under Subpart E of 45 CFR § 164, the contractor shall comply with the requirements of Subpart E that apply to the County in the performance of such obligations.

**B. Permitted Uses and Disclosures by Business Associate**

The Contractor may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, King County as specified in this Contract, provided that such use or disclosure would not violate HIPAA if done by King County or the minimum necessary policies and procedures of King County.

**C. Effect of Termination**

1. Except as provided elsewhere in this section, upon termination of this Contract, for any reason, the Contractor shall return or destroy all protected health information received from the County, or created or received by the Contractor on behalf of the County. This provision shall apply to protected health information that is in the possession of subcontractors or agents of the Contractor. The Contractor shall retain no copies of the protected health information.
2. In the event the Contractor determines that returning or destroying the protected health information is infeasible, the Contractor shall provide to King County notification of the conditions that make return or destruction infeasible. Upon notification that return or destruction of protected health information is infeasible, the Contractor shall extend the protections of the Contract to such protected health information and limit further uses and disclosure of such protected health information to those purposes that make the return or destruction infeasible, for so long as the Contractor maintains such protected health information.

D. Reimbursement for Costs Incurred Due to Breach

Contractor shall reimburse the County, without limitation, for all costs of investigation, dispute resolution, notification of individuals, the media, and the government, and expenses incurred in responding to any audits or other investigation relating to or arising out of a breach of unsecured protected health information by the Contractor.

**XXII. EMERGENCY RESPONSE**

- A. The Contractor shall prepare and submit within three months of the execution of the Contract the necessary plans, procedures and protocols to:
  1. Respond to and recover from a natural disaster or major disruption to Contractor operations such as a work stoppage; and
  2. Continue operations during a prolonged event such as a pandemic.
- B. If the Contractor has contracted with the Department of Community and Human Services within the last 36 months, the Contractor shall submit an emergency response plan within one month of the execution of the Contract.
- C. The Contractor shall conduct exercises or drills to test the effectiveness of its plans at least once a year and document the results of the exercise or drill.
- D. The Contractor shall prepare the plans in a format approved by the County. The explanation of the format will include the specific content of the Contractor's plans. The County will specify areas that must be addressed in the Contractor's plan.
- E. The County may waive the requirements in subsections A, B, C or D. upon written request by the Contractor identifying compelling reasons why such requirements should not apply.

**XXIII. NOTICES**

Unless otherwise specified in the Contract, all notices or documentation required or provided pursuant to this Contract shall be in writing and shall be deemed duly given when received at

the addresses first set forth below via U.S. mail, personal delivery or electronic mail with the notice or documentation attached in portable document format (PDF).

**XXIV. KING COUNTY RECYCLED PRODUCT PROCUREMENT POLICY**

The Contractor shall use recycled paper for all printed and photocopied documents related to the submission of this solicitation and fulfillment of the Contract and shall, whenever practicable, use both sides of the paper. (Reference: KCC 18.20 and King County Executive Policy CON 7-1-2)

**XXV. SERVICES PROVIDED IN ACCORDANCE WITH LAW AND RULE AND REGULATION**

The Contractor, and any subcontractor(s) agree to abide by the terms of the Revised Code of Washington, rules and regulations promulgated thereunder, and the Department of Social and Health Services (DSHS) and County Agreement on General Terms and Conditions between the DSHS and King County, as amended, and regulations of the state and federal governments, as applicable, which control disposition of funds granted under this Contract, all of which are incorporated herein by reference.

The Contractor shall ensure that all subcontractors receiving any federal funds pursuant to this agreement have not been disbarred or suspended from federal contract participation. This may be done by checking the Excluded Parties List System <https://www.sam.gov>, which lists all suspended and debarred entities.

In the event of a conflict between any of the language contained in any exhibit or any attachment to this Contract, the language in the Contract shall have control over the language contained in the exhibit or the attachment, unless the parties affirmatively agree in writing to the contrary.

This Contract shall be governed by and construed to the laws of the State of Washington. Any claim or suit between the parties arising out of this Contract may only be filed and prosecuted in King County Superior Court of U.S. District for the Western District of Washington, in Seattle.

**XXVI. NO THIRD PARTY BENEFICIARIES**

Except for the parties to whom this Contract is assigned in compliance with the terms of this Contract, there are no third party beneficiaries to this Contract, and this Contract shall not impart any rights enforceable by any person or entity that is not a party hereto.

**XXVII. POLITICAL ACTIVITY PROHIBITED**

None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

**XXVIII. FORCE MAJEURE**

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event to perform or comply with any obligation or condition of this Contract, upon

giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including termination for default.

**XXIX. SEVERABILITY**

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

IN WITNESS HEREOF, the parties hereto have caused this contract to be executed and instituted on the date above written.

KING COUNTY

CONTRACTOR

FOR

King County Executive

Signature

Date

Name (Please type or print)

Date

Approved by DCHS Director

Approved as to Form:

OFFICE OF THE KING COUNTY  
PROSECUTING ATTORNEY  
JULY 2013